

State of New Hampshire

Board of Tax and Land Appeals

Michele E. LeBrun, Chair
Albert F. Shamash, Esq., Member
Theresa M. Walker, Member

Anne M. Stelmach, Clerk



Governor Hugh J. Gallen
State Office Park
Johnson Hall
107 Pleasant Street
Concord, New Hampshire
03301-3834

In Re: City of Berlin

Docket No.: 29285-19OS

ORDER AND HEARING NOTICE

The board opened this docket to address allegations in a “Letter” dated July 22, 2019 received from Mr. Stephen M. Dion (a taxpayer) regarding certain “disproportionate abatements” in the “City” resulting from a statistical “Update” of all assessments in tax year 2018. Following an August 9, 2019 Order, the City and its Board of Assessors, through its attorneys at Gallagher, Callahan & Gartrell, filed an extensive “Response” on September 30, 2019.¹ The Response includes affidavits and documentary exhibits, asserts the “baseless allegations in Dion’s letter are without legal and/or factual merit” and asks the board to “dismiss any claim for relief contained in Dion’s [L]etter,” “decline jurisdiction over this matter” and “[c]lose this docket.” (See Response, pp. 10-11.)

¹ The board ordered the City to reply within thirty (30) days, however on August 30, 2019 the City filed a motion to extend the deadline. The board granted the motion and extended the deadline to September 30, 2019.

The board has broad authority to investigate the allegations presented. See RSA 71-B:16,² RSA 71-B:5, I and, e.g., Appeal of Wood Flour, Inc., 121 N.H. 991, 994 (1981) (“[t]he board ... has broad authority to remedy the inequities of improper and illegal taxation” and “the general thrust of the statute [RSA 71-B:16] is to promote the legality of real estate taxes.”) The board finds an evidentiary hearing is warranted before deciding whether to exercise its reassessment jurisdiction and authority.³

A detailed review of the Dion Letter and Response has resulted in a number of questions and concerns regarding the following issues:

- the rationale for, and timing of, the City’s decision to perform the Update (September – October, 2018);
- the City’s decision not to hold hearings or to notify taxpayers of the new assessments resulting from the Update;
- the possible implementation of the assessments resulting from the Update prior to the acceptance of those values by the Board of Assessors;
- the selected timeframe and small number of sales used in the Update;
- the resulting land valuation model; and
- the decision making process on abatement applications resulting from the Update.

² In particular, RSA 71-B:16 provides:

Order for Reassessment. The board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state:...

II. When it comes to the attention of the board from any source, except as provided in paragraph I, that a particular parcel of real estate or item of personal property has not been assessed, or that it has been fraudulently, improperly, unequally, or illegally assessed . . .

III. When in the judgment of the board, determined in accordance with RSA 71-B:16-a, any or all of the property in a taxing district should be reassessed or newly assessed...

³ See, e.g., In re: Town of Seabrook, BTLA Docket No. 26624-12OS, October 29, 2012 Order.

Further, the board has questions regarding the obligations and performance of the City's contract assessor (KRT Appraisal) with respect to the Update and the abatement process, as well as the Board of Assessor's adjustments to various factors in the "CAMA" system, including depreciation, obsolescence, neighborhood codes, site index codes and building quality and condition factors.

Consequently, the board is scheduling a hearing on **Monday, December 9, 2019 at 10:00 a.m.** at 107 Pleasant Street, Johnson Hall, Concord, NH 03301 to allow City officials and other persons to present evidence regarding these issues. Specifically, the board directs the City Manager (Mr. Jim Wheeler) and the members of the Board of Assessors (Robert Goddard, Mark Eastman and Kem Rozek) to appear and be prepared to testify, along with the KRT personnel involved in the Update and abatement process. Further, the board directs any department of revenue administration ("DRA") personnel involved with the City's assessing practices to be present and prepared to provide information regarding these issues, specifically the DRA's involvement during the planning stages of the Update. The board will then determine whether it should assert jurisdiction pursuant to RSA 71-B:16. (See fns. 2 and 3.)

Prior to the hearing, and no later than November 18, 2019, the City is ordered to provide to the board the following documents:

- all City Council and Board of Assessor's minutes of meetings pertaining to the Update (to the extent not already provided as part of the Response);
- all contracts with all third party assessing firms, including the Update contract with KRT Appraisal, annual assessing contracts and utility valuation contracts (if any);
- all correspondence between the City and the DRA regarding the Update; and
- the report prepared under Standard 6 of the Uniform Standards of Professional Appraisal Practice ("USPAP") for the Update.

In accordance with Tax 208.05(a)(6), the City shall post copies of this Order and Hearing Notice in two public places in the City or in a newspaper of general circulation no less than ten (10) days prior to the hearing date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS


Michele E. LeBrun, Chair


Albert F. Shamash, Member


Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Order and Hearing Notice has been mailed this date, postage prepaid, to: Matthew V. Burrows, Esq. and Charles P. Bauer, Esq., Gallagher, Callahan & Gartrell, 214 N. Main Street, Concord, NH 03301, counsel for the Municipality; City of Berlin, Chairman, Board of Assessors, 168 Main Street, Berlin, NH 03570; Mr. James Wheeler, City Manager, City of Berlin, 168 Main Street, Berlin, NH 03570; James Gerry, Director of Property Appraisal, State of New Hampshire, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301; KRT Appraisal, 191 Merrimack Street - Suite 701, Haverhill, MA 01830, Contracted Assessing Firm; and Stephen M. Dion, 100 Jasper Street, Berlin, NH 03570, Courtesy Copy.

Dated: October 29, 2019


Anne M. Stelmach, Clerk